IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	
Plaintiff,	**CRIMINAL NO. 4:12-cr-195**
vs.	**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO CONTINUE TRIAL AND TO EXTEND DEADLINES**
PAMELA J. WARD, a/k/a PAM WARD,	
Defendant.	

COMES NOW, the Defendant, by and through the undersigned attorneys, and in support of Defendant's Motion to Continue filed pursuant to Federal Rules of Criminal Procedure and to Title 18 U.S.C. Sections 3161, 3162, Chapter 208, Speedy Trials, and other applicable sections of Federal Law and Rules provides the following Brief and Memorandum in support of that Motion:

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I. FACTUAL RECITATION

The Defendant Pamela J. Ward is a long time resident of the City of Ottumwa, Iowa and for a period of approximately thirty (30) years was an employee of the City of Ottumwa for the Ottumwa Transit Authority (OTA) and the 10-15 Regional Transit Agency (10-15 RTA), with most of that time being as the Transit Administrator of both entities. The OTA provides public transportation for the City of Ottumwa, Iowa and the 10-15 RTA provides public transportation for Wapello County, Iowa and nine (9) other

adjacent Counties in Area 15 of the State of Iowa. Both Transit entities are partially funded as a result of grants and payments made by the Federal Transit Administration to and administered by the Iowa Department of Transportation.

As part of her employment, Ms. Ward would direct the keeping of records necessary for the information required by the Agencies for the funding grants and make application for funds and grants for OTA and 10-15. In that capacity, various records of ridership, the calculation of ridership and the analysis of those factors were kept by Ms. Ward and employees of the OTA and 10-15, both in paper form and digitally in the records of the OTA and the 10-15.

In May of 2011, as part of an investigation of claims made about the OTA actions, Ms. Ward was discharged by the OTA at the demand of the Iowa Department of Transportation. At that time she requested she be provided copies of certain documents on her work computer in the records of the OTA and 10-15 but that request was denied. Those records, listed in the Motion and shown on the requested subpoenas attached to the Motion are evidentiary in this action, have exculpatory, admissible, relevant information. Those records are still in the custody and control of the 10-15 Regional Transit Agency and the Ottumwa Transit Authority. However, at some time after Ms. Ward's termination, the City of Ottumwa, in some manner superseded the Ottumwa Transit Authority, which had been an independent entity, taking it under the control of the City and eliminating its Board as an independent Board, making them only advisory to the Ottumwa City Counsel. The City may now have the care, custody and control of these records.

The current deadlines set by the Court in its Arraignment Order do not allow

sufficient time for this action and for the necessary preparation of the documents already presented in discovery. The necessity of time for these actions and having sufficient time to assure the attendance of witnesses at trial and other factors set forth herein make it impractical for the parties to be able to properly prepare for trial within the seventy day period and requires an extension of these time periods as allowed by 18 U.S. C. 3161(d)(2). A failure to grant this continuance would be likely to result in a miscarriage of Justice and would not allow the Attorneys for the Defendant a reasonable amount of time necessary for effective and adequate preparation for trial, taking into account the exercise of due diligence in that preparation.

The Defendant has discussed these issues with Mr. John Courter, Assistant United States Attorney in charge of the prosecution in this matter and he has advised that he had no contest to the prior Motion for subpoenas and no resistance or objection to this Motion for Continuance of Trial date and deadlines. The best interests of justice and judicial economy require the Court to grant this Motion.

II. MEMORANDUM OF LAW

Title 18 U.S.C. Section 3161 et. Seq. set out the Government Speedy Trial Act which provided for the Defendant's right to Speedy Trial in criminal matters in the United States Courts. That act also sets out provisions for continuance of the original trial date if good cause and the interests of justice in doing so make that expedient. See 18 U.S.C. 3161(h)(7)(B).

> "District courts are afforded broad discretion when ruling on requests for continuances. Continuances generally are not favored and should be granted only when the party requesting one has shown a compelling reason. We will reverse a district court's decision to deny a motion for continuance only if the court abused its discretion and the moving party was prejudiced by the denial.

Id. (citing *United States v. Cotroneo,* 89 F.3d 510, 514 (8th Cir.1996) (citations omitted)).
"... In determining whether the district court abused its discretion by denying the motions for continuance, we consider "whether counsel had sufficient time to prepare for trial; ... whether counsel's conduct at trial showed that he was well prepared; [and] whether the court's refusal to grant a continuance prejudiced the defendant." *United States v. Heine,* 920 F.2d 552, 555 (8th Cir.1990) (per curiam) (citing *United States v. Sheehy,* 670 F.2d 798, 799 (8th Cir.1982))..."

". . .A district court may grant a defendant's motion for a new trial if the interests of justice so require. Fed.R.Crim.P. 33; *United States v. Parker,* 267 F.3d 839, 846 (8th Cir.2001)." United States v. Vesey, 330 F.3d 1070, 1071-73 (8th Cir. 2003).

In United States v. Verderame, 51 F.3d 249, 251 (11th Cir. 1995), the Eleventh Circuit in discussing the right to a continuance stated:

"...The Sixth and Fourteenth Amendments to the U.S. Constitution guarantee that any person brought to trial in any state or federal court must be afforded the right to assistance of counsel before he or she can be validly convicted and punished by imprisonment. *Faretta v. California,* 422 U.S. 806, 807, 95 S.Ct. 2525, 2527, 45 L.Ed.2d 562 (1975). Under certain circumstances, denial of a motion for continuance of trial may vitiate the effect of this fundamental right:
The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied. *Ungar v. Sarafite,* 376 U.S. 575, 589, 84 S.Ct. 841, 849-50, 11 L.Ed.2d 921 (1964) (citations omitted). To prevail on such a claim, a defendant must show that the denial of the motion for continuance was an abuse of discretion which resulted in specific substantial prejudice. *United States v. Bergouignan,* 764 F.2d 1503, 1508 (11th Cir.1985)."

In finding that the District did not abuse its discretion in overruling a Motion to Continue the Eighth Circuit stated:

"Wright's first argument on appeal is that the district court abused its discretion in denying the motion for a continuance that Wright made on the day of trial. "We will not overturn a trial court's denial of a continuance unless the trial court clearly has abused its discretion, because continuances are not favored and should

> be granted only when a compelling reason has been shown." *United States v. Summage,* 575 F.3d 864, 877 (8th Cir.2009) (internal marks omitted). Further, this Court will only reverse the district court's denial of a motion for a continuance if "the moving party was prejudiced by the denial." *United States v. Hyles,* 479 F.3d 958, 967 (8th Cir.2007) (internal marks omitted)." See United States v. Wright, 682 F.3d 1088, 1090 (8th Cir. 2012).

In the present case the factual situation address in the Motion and prior Motion for Permission to Subpoena submitted to the Court shows that the Motion in this case more nearly resembles that in Vesey, rather than that in Wright. There is a clear showing here that the information is voluminous which has been presented in discovery and existing documents which Defendant believes may include exculpatory, relevant and admissible evidence have not been delivered to the Government or the Defendant. They are necessary for the defense and for preparation of witnesses for trial. The grounds and basis are set out in the Motion.

III. CONCLUSION AND REQUEST

The interests of justice require the continuance of this matter for trial for the reasons set forth in the Motion and this Brief and the criteria necessary for such action have been met. The Court should grant the continuance and extensions of deadlines. Any requirements of speedy trial are in no way impeded by this minimal delay. The best interest of justice and need for adequate preparation outweigh any need for the original trial date, and the public policy of that statute is in no way endangered by this action .

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 29th day of January, 2013, the foregoing document was electronically filed with the Court using the CM/ECF system and served to the parties listed below by electronic means through the ECF system.

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